

STATE WATER RESOURCES CONTROL BOARD MEETING  
SACRAMENTO, CALIFORNIA  
MAY 17, 1984

261.0  
General  
Wagon Creek

ITEM: 8

SUBJECT PROPOSED ORDER DENYING PETITION FOR DETERMINATION OF RIGHTS OF VARIOUS CLAIMANTS TO THE WATER OF WAGON CREEK, COLD CREEK, SPRING CREEK AND SACRAMENTO RIVER AND ITS TRIBUTARIES IN SISKIYOU COUNTY

DIS-  
CUSSION: Petitions have been filed in accordance with Water Code Section 2525 requesting determination of the rights of the various claimants to the water of Wagon Creek, Cold Creek, Spring Creek and Sacramento River. An investigation of the facts and conditions has been made by the Board's staff to determine if the public interest and necessity will be served by approval of the petition and by proceeding with a determination. The report of the staff investigation is attached.

In its investigation the staff found that the petitioners were claiming the right to convey water through an old ditch which had deteriorated from lack of proper maintenance. The ditch had not been used for several years. In attempting to enter on a large parcel of land to maintain the ditch the petitioners found that their right of access was in dispute. The staff tried to assist them but since the right of way problem was not within the Board's jurisdiction, the assistance was limited. The petitioners then attempted to resolve the problem using their own resources. They have been unsuccessful.

Staff has concluded that without facilities to convey the water to their place of use it would be fruitless to attempt to determine the water right. Therefore, the staff recommends that the petition be denied.

POLICY  
ISSUE: Should the petitions for determination of the water rights of the named streams be denied?

FISCAL  
IMPACT: If the petitions for determination of the water rights of the named streams are denied, there will not be any fiscal impact.

STAFF  
RECOMMEN-  
DATION: Staff recommends adoption of the proposed order denying petition for determination of water rights.

Policy Review R.W.

Fiscal Review PS

Legal Review J.M.

REPORT OF PRELIMINARY INVESTIGATION: WAGON CREEK, COLD CREEK, SPRING CREEK AND SACRAMENTO RIVER AND ITS TRIBUTARIES IN SISKIYOU COUNTY - PETITION FOR STATUTORY DETERMINATION OF WATER RIGHTS

On December 28, 1981, this office received a petition signed by or on behalf of 40 persons for a statutory determination of the water rights to Wagon Creek, Cold Creek, Spring Creek and Sacramento River and tributaries in Siskiyou County, California.

The California Water Code provides that before the Board can approve such a petition it must determine that the public interest and necessity would be served. The Code also provides that the Board conduct a preliminary investigation to gather factual data necessary to support its decision.

By letter dated February 9, 1982, 50 interested parties in the area were informed that staff would be conducting an investigation. In response, approximately 40 letters were received by the Board with comments or recommendations regarding the need for an adjudication. In response to these letters the staff engineers assigned to this project took field trips to the area to investigate the stream system and to talk to property owners. An information public meeting was held about March 1, 1982, at which time the staff engineers were present. The purpose of the meeting was to discuss the petitions and the procedures involved in a statutory adjudication and to define the problems related to the use of water in the area.

#### Nature of Controversy

The major problem revolves around water supplies for the Cantara Water Association. The Cantera Water Association includes the owners of property in the area. At one time water was conveyed to the Cantara Water users through the Highline Ditch, which is presently unusable because of lack of maintenance. Over the years, this ditch has been relocated several times and remnants of this ditch can be seen at several locations. Attached is a copy of a map showing approximate ditch alignments in the area. No maintenance of the ditch has been accomplished for several years, and at certain locations it is almost completely obliterated. There is no possibility that the ditch can be used without extensive repair.

The owners of a large parcel of land through which the ditch passes will not allow the representatives of the Cantara Water Association to enter onto the land for the purpose of maintenance of the ditch. The Association has been attempting to establish the fact that either an easement has been granted by some prior owner, or that an easement had been established in years past by some manner of prescription.

Several discussions were held with representatives of the Cantara Water Association. Staff informed these representatives that the Association should clearly define the ditch easement or right of access to maintain the ditch. The Association hired an attorney to research their right of access to maintain the ditch. The Association requested the Board to postpone further work pending the results of their legal investigation.

#### Present Status

By letter dated December 1, 1982, the Association stated that they were still working with legal counsel on clarification of the ditch easement rights. By letter dated August 24, 1983, the staff asked for a progress report on their investigation. We did not receive a written reply and sent a follow-up letter



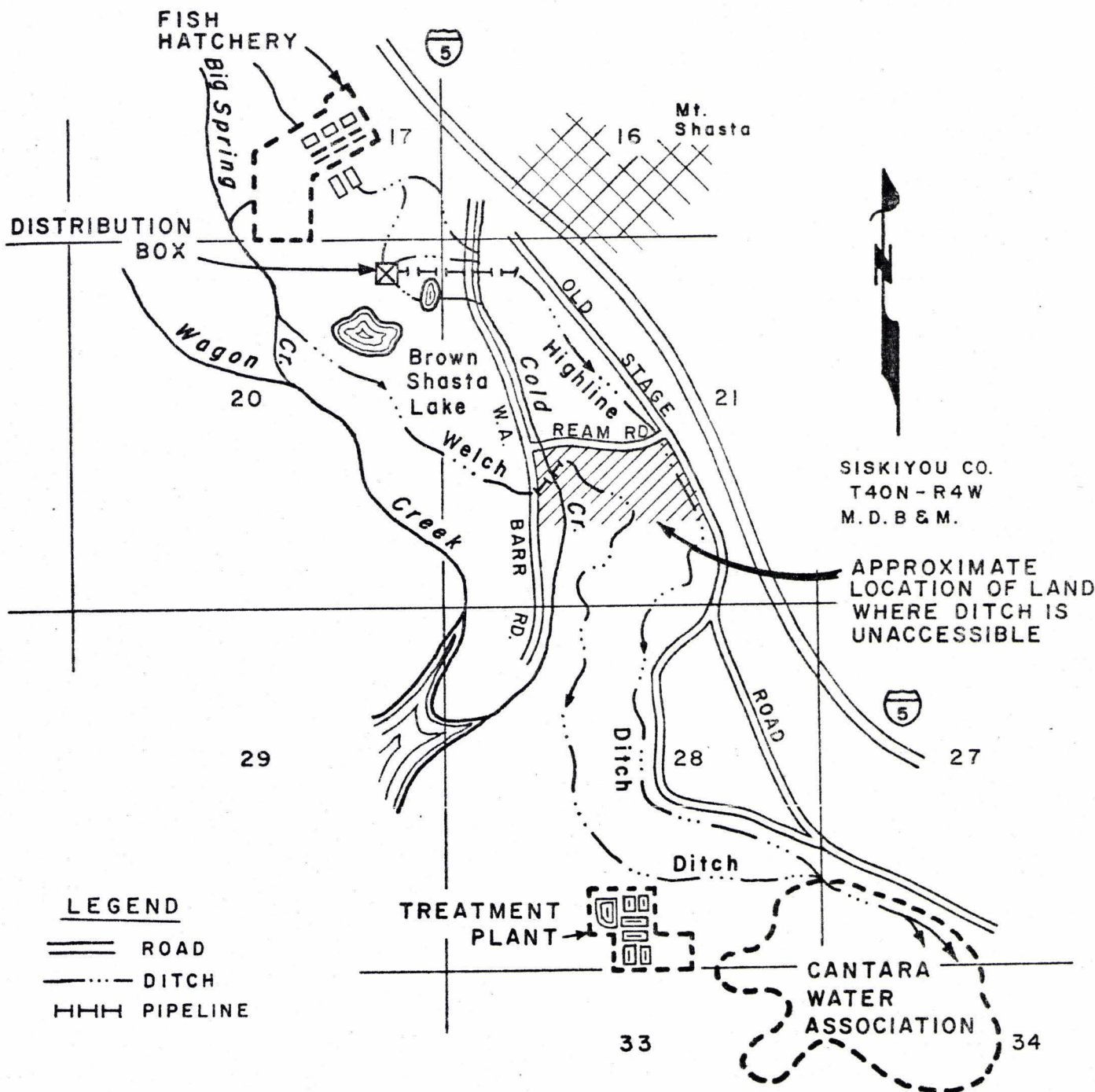
dated October 17, 1983, stating that the staff would recommend the petitions be denied without prejudice. By letter dated October 28, 1983, the Association stated that their efforts to establish easement rights on the ditch were unsuccessful and expressed disappointment that the Board had not supported them in the easement problem. Early in the investigation the staff had believed that its effort on behalf of the petitioners might prove helpful. However, as the facts became known it was apparent that the petitioners should assume the burden of proving the existence of an easement. A letter to the Association dated January 12, 1984, explained that the Board had no jurisdiction or authority to assist in securing rights of way for water conveyance facilities.

#### Conclusions and Recommendations

The ditch easement rather than water rights appears to be the major problem. Staff has informed the Cantara Water Association of this issue. The easement issue would have to be resolved before the Board could adjudicate water rights. Further, if the water right has not been exercised for a period of five years, through lack of access to the ditch or any other reason except unavailability of water in the source, the right would be lost and an adjudication would therefore prove to be of no benefit to the petitioners.

The Board does not have the expertise nor the authority to resolve the issue of easement. Therefore, staff recommends that the petition be denied without prejudice.

Attachment



# LEGEND

- == ROAD
- DITCH
- HHH PIPELINE

NOT TO SCALE

## PETITION TO ADJUDICATE WAGON CREEK - BIG SPRING CREEK COLD CREEK

14 March 84